

To: Business Committee

From: Carwyn Jones AM

Minister for Environment, Planning and Countryside

EXPLANATORY MEMORANDUM

AGRICULTURE, ENGLAND AND WALES

PESTICIDES, ENGLAND AND WALES

THE PESTICIDES (MAXIMUM RESIDUE LEVELS IN CROPS, FOOD AND FEEDING STUFFS) (ENGLAND AND WALES) REGULATIONS 2005

Summary

The European Community has in place a regime permitting the setting, on a scientific basis, of maximum pesticide residue levels (MRLs) on crops, food and feeding stuffs. The programme has been designed to harmonise Community legislation and strengthen consumer protection by providing a mechanism to take action should any pesticide misuse occur.

These Regulations will implement three new Commission Directives 2005/37/EC, 2005/46/EC and 2005/48/EC introducing a number of new MRLs, cereals and foodstuffs of animal origins.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations 2005 in accordance with Standing Order 25 (section 3).
2. A copy of the Instrument is submitted with this Memorandum.

Enabling power

3. The power enabling these Regulations to be made is contained in section 2(2) of the European Communities Act 1972. These powers are exercisable jointly by the National Assembly for Wales and by the Secretary of State for Environment, Food and Rural Affairs. The National Assembly for Wales is designated, under section 2(2) of the 1972 Act to make Regulations in relation to Europe's Common Agricultural Policy, by virtue of the European Communities (Designation) (No. 3) Order 2005 (SI 2005/2766).
4. This designation does not allow the Assembly to make these Regulations on a Wales only basis.

Effect

5. These Regulations, which extend to England and Wales only, consolidate and replace the provisions of the Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (England and Wales) Regulations 1999 as amended. When a crop is treated with a pesticide, a very small amount of the pesticide can remain in the crop until after it is harvested. This is known as the 'residue'. The levels or amounts of residues present are expressed in milligrams of the chemical in a kilogram of crop/food/commodity (mg/kg).
6. They specify maximum levels of pesticide residues, which crops, food and feeding stuffs may contain in implementation of Council Directive 76/896/EEC relating to fruit and vegetables, Council Directive 86/362/EEC and Council Directive 86/363/EEC as regards cereals and products of animal origin, and Council Directive 90/642/EEC as regards certain products of plant origin (including fruit and vegetables), as amended.
7. In particular, these Regulations specify new maximum residue levels on products of plant origin, cereals, and foodstuffs of animal origin. Details of these products are given at Annex A.
8. Regulation 3 also creates offences (i.e. the prohibition on putting products with excess residues into circulation), specifies penalties for these offences (which, on summary conviction, to a fine not exceeding the statutory maximum (currently £5,000); and on conviction on indictment, to a fine), provides defences and confers enforcement powers where maximum residue levels have been exceeded in respect of products put into circulation.
9. These Regulations also confer powers to seize and dispose of products where maximum residue levels have been exceeded (regulation 4) and prescribe how much of a particular product is to be taken into account in determining whether a maximum residue level has been exceeded in accordance with Council Directive 90/642/EEC (regulation 5(a) and Schedule 3). Provision is also made with regard to the manner for determining whether maximum residue levels have been exceeded when found in dried or processed products or composite foods, so far as these are the subject of the Residues Directives (regulation 5(c) and (d)).

Target Implementation

10. It is intended that this Instrument will be made on 29 November 2005, and laid before Parliament shortly after, in order to come into force on 15 December 2005. If the intended target dates are not achieved, it would prove difficult to enforce the new and revised maximum residue levels without statutory changes.

Regulatory Appraisal

11. As these Regulations fall outside the definition of Assembly subordinate legislation in Section 58 of the Government of Wales Act 1998, a Regulatory Appraisal is not required to be undertaken.

Financial Implications

12. The Regulations reflect a technical change to the framework Directives (76/896/EEC, 86/362/EEC, 86/363/EEC and 90/642/EEC rather than a policy change. Consequently there are no additional financial implications for the Assembly, for business or others.

Consultation

With Stakeholders

13. No consultation has been carried out on these particular Regulations, as they reflect a technical change to the framework Directives rather than a substantive policy change.

14. In 2003 a fundamental assessment of the impact of the arrangements for setting and controlling MRLs was undertaken, on a UK wide basis, following publication of a Commission proposal to recast the procedures used by EC member states. This proposal was subsequently adopted as a Regulation of the European Council and Parliament (EC Regulation 396/2005).

15. The following organisations were consulted as part of this assessment: representatives and advisors to the farming, growing, forestry and the crop protection industries; retailers and suppliers; consumer bodies; educational and research institutes and pressure groups and Non-Departmental Public Bodies with an interest in public health and environmental and wildlife protection.

16. In all 694 consultation documents were despatched by post and email. There were 12 responses from: farming and growing representative bodies; the crop protection industry and their advisors; the supply trade; a landowners' federation and consumer council. The consultation document received 1300 hits on the Pesticides Safety Directorate's website. Respondents were supportive of the principle of MRLs and generally satisfied with the arrangements.

17. The 2003 consultation exercise indicated costs had changed very little since the previous assessment made in 1999 and therefore, an additional consultation was considered unnecessary for the consolidation of these current Regulations.

With Subject Committee

18. These Regulations were notified to the Environment, Planning and Countryside Committee, via the list of forthcoming legislation (paper EPC(2) 11-05 (p.7) Annex 1 item no. 33) on 5 October 2005 and were identified for detailed scrutiny. The Committee scrutinised the Regulations on 3 November 2005 (EPC(2)12-05(p.4) and recommended approval of the Regulations without amendment.

Recommended Procedure

19. Subject to the views of the Business Committee, I recommend that these Regulations proceed to Plenary under the Accelerated procedure, because

they reflect a technical change to the EU framework Directive rather than a policy change.

Compliance

20. The proposed legislation will (as far as applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 1998, section 120);
- be compatible with the Assembly's scheme for sustainable development (section 121);
- be compatible with Community law (section 106);
- be compatible with the Assembly's human rights legislation (section 107);
and
- be compatible with any international obligations binding the UK Government and the Assembly (section 108).

21. The information in this Memorandum has been cleared by the Directorate of Legal Services and the Assembly Compliance Office.

22. Drafting Lawyer: Chrishan Kamalan (Ext 1246)

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CARWYN JONES AM

MINISTER FOR ENVIRONMENT, PLANNING AND COUNTRYSIDE

NOVEMBER 2005

ANNEX A - TABLE OF NEW/REVISED ACTIVE SUBSTANCES

| Directive | Active Substance | Definition | Description |
|------------------|----------------------------|-------------------|--|
| 2005/37/EC | Carfentrazone-ethyl | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Fenamidone | Fungicide | A substance which prevents/kills fungi |
| | Isoxaflutole | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Maleic Hydrazide | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Mecoprop | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Mecoprop-P | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Propyzamide | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Trifloxystrobin | Fungicide | A substance which prevents/kills fungi |
| 2005/46/EC | Amitraz | Insecticide | A substance which prevents/kills unwanted insects |
| 2005/48/EC | Flufenacet | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Fosthiazate | Insecticide | A substance which prevents/kills unwanted insects |
| | Iodosulfuron-methyl sodium | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Iprodione | Fungicide | A substance which prevents/kills fungi |
| | Mesotrione | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Molinate | Herbicide | A substance which prevents/kills unwanted plants/weeds |
| | Picoxystrobin | Fungicide | A substance which prevents/ kills fungi |
| | Propiconazole | Fungicide | A substance which prevents/ kills fungi |
| | Silthiofam | Herbicide | A substance which prevents/kills unwanted plants/weeds |